and again he went on to say:

"In imposing the sentence on the first accused I took into consideration that he is 25 years old and he was the person who must have persuaded the second accused to commit the crime with him."

No inference should be drawn on mere surmises. It may in some cases be difficult to draw a line between suspicion and proof. Care must, however, be taken that the decision of the court does not rest upon suspicion. There could be no doubt of the guilt of the appellant in this case. The appeal itself is restricted to sentence alone.

The second accused was 20 years of age while the appellant was 25 years at the date of the commission of the crime. I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There has, however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of the youth alone is capable of performing and producing. Law cannot, in my view, remain merely a static and a meaninglessly passive, if ornamental and an orthodox instrument of justice, ineffective in its results and application. The social needs of the times have to be met and effectively met. It is not merely the correction of the offender which is the prime object of punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society.

In my view the learned president was far too lenient in sentencing the appellant to only one year's imprisonment. The appeal is dismissed but the sentence is enhanced to two years.

Appeal dismissed.
Sentence enhanced.

Solicitor: *Sandu.*

PUBLIC PROSECUTOR v. CHEAH CHOOI CHUAN

[R.Cr.J. (Chang Min Tat J.) February 14, 1972]

[Penang — Criminal Revision No. 3 of 1972]

Criminal Law and Procedure — Revision — Plea of guilty after challenge to cut off cockerel's head — Effect of in criminal proceedings.

Oaths and Affirmations — Challenge to cut off cockerel's head — Whether challenge permitted in criminal proceedings — Oaths and Affirmations Ordinance 1949, s. 9.

An accused person was allowed to plead guilty to a charge after the identifier had accepted his challenge to cut off a cockerel's head on the challenge issued by him. The summary execution of a cockerel took place in the compound of a court.

This case was called up on revision to determine whether the order made by the learned president of the sessions court should be revised.

Held: by section 9 of the Oaths and Affirmations Ordinance, 1949, this form of oath was limited to judicial proceedings of a civil nature. Thus, there was no justification for permitting this challenge to be taken in criminal proceedings. Therefore the entire proceedings in the court below became a complete nullity. The conviction must be quashed and the sentence set aside. There should be a retrial before another president.

Abu Talib bin Othman (Legal Adviser, Penang) for the Public Prosecutor.

Respondent in person.

Chang Min Tat J. (delivering oral judgment): My attention was drawn to this case by the prominence given to it by the newspapers. If it is felt that the prominence was undue it is only in proportion to the unusualness of the proceedings in which an accused person was allowed to plead guilty to the charge after the identifier had accepted his challenge to cut off a cockerel's head on the challenge issued by him.

In passing, I would remark that the prominence was partly due to the summary execution of a cockerel in the compound of a court.

I called up this case therefore on revision and this morning after hearing the learned Legal Adviser who was good enough to attend court I invited the accused to address me on whether I should not revise the order made by the learned president of the sessions court. He said in answer to me that he did not commit the offence. This must therefore reinforce the suspicion that I had on reading the article in the newspapers that his plea of guilty subsequent to the cutting of the cockerel's head was made with the mental reservation that if the complainant was prepared to perjure her soul or to suffer whatever torments in the next world she believed she would be subject to for perjury, he would be prepared to go to jail. It is a cardinal principle that any plea of guilty must be completely unreserved, unqualified and unequivocal. The circumstances of this case must persuade me that there was no such plea and even though the record showed that subsequent to the execution of the cockerel the accused was re-charged and he pleaded guilty thereto, the plea was nevertheless not of that kind that should have been accepted by any court which purports to administer justice in any proper sense of it.

Further I find nothing in the record to show that the witness who accepted the challenge was of that religious persuasion that makes the cutting of a cockerel's head a form of oath that she believes to be completely binding on her. In the absence of any such evidence her act cannot be said *per se* to have established beyond reasonable doubt the identity of a person who had robbed her.

What however is the fundamental objection of the whole proceedings is that while this unusual form of oath or any other usual form of oath is permissible in court so long as it is not repugnant to justice or decency and does not affect any third party under section 8 of the Oaths and Affirmation Ordinance No. 51 of 1949, it is by section 9 of the same Ordinance limited to judicial proceedings of a civil nature. There is therefore no justification whatsoever for permitting this form of oath or this challenge to be taken in criminal proceedings.

In my view the entire proceedings in the court below are a complete nullity. The conviction must be quashed and the sentence set aside and a retrial ordered before another president.

Order accordingly.

TAY CHOON & ORS. v. JEET KAUR

[R.C.J. (Syed Othman J.) February 26, 1972]

[Johore Bahru — Civil Revision No. 1 of 1972]

Practice and Procedure — Pleadings — Statement of claim signed by person other than plaintiff — Effect of — Subordinate Courts Rules 1950, O. X r. 1, O. VI r. 3, O. XIX r. 2.

Practice and Procedure — Execution order — Levying of — Attachment — Judgment obtained by default of appearance in absence of defendants — Service of copy of judgment on judgment debtor — Necessity for — Delay — Intention to embarrass defendant — Subordinate Court Rules, 1950, O. XXI, rr. 2 & 4, O. XX r. 6(2).

Practice and Procedure — Jurisdiction — Powers of revision — Courts of Judicature Act, 1964, s. 33.

Moneylenders — Promissory note, action on — "Agent" suing in the name of the "principal" — No evidence that "agent" was licensed to carry on business as agent — Moneylenders Ordinance, 1951, s. 5.

This was a petition for revision of a magistrate's judgment against the petitioners/defendants to pay the respondent/plaintiff the sum of $433.50, including costs, on a claim under a promissory note. The judgment had been obtained by default of appearance. The petition alleged, *inter alia*, that the action had been brought by a person other than the plaintiff named in the statement of claim and that none of the defendants had been served with a copy of the judgment even when the house of the first defendant was attached under an execution order. The execution order was issued on March 3, 1971, but was levied in February 1972, a few days before the Chinese New Year.

Held: (1) although at law a plaintiff is entitled to levy execution at any time within one year from the date of issue, in this case, since it was done a few days before the Chinese New Year, the clear intention of the levy was to embarrass the first defendant, a Chinese, and her family during the festive season;

(2) on the face of it the registrar should have rejected the statement of claim on the ground that it was not signed by the plaintiff or his solicitor as required by O. X r. 1 of the Subordinate Courts Rules, 1950;

(3) where judgment had been obtained by default of appearance, the registrar should not issue execution unless the judgment creditor has shown to him, in such form as the registrar considers necessary, that a copy of the judgment has been served on the judgment debtor.

REVISION PETITION.

Syed Othman J.: The petitioners were defendants in Johore Bahru Magistrate's Court Civil Action No. 296 of 1969. They have petitioned for a revision of the magistrate's judgment against them to pay the respondent, the person named as the plaintiff in the said action, the sum of $433.50 including costs on a claim under a promissory note.

Most of the grounds which have been raised in the petition have no substance. I need only concern myself with the allegations that the action had been brought by a person other than the plaintiff named in the statement of claim and that none of the defendants had been served with a copy of the judgment even when the house of the first defendant was attached under an execution order. From the magistrate's record the court issued the execution order as far back as 3rd March, 1971, but it was not levied until just a few days ago. No doubt at law a plaintiff is entitled to levy execution at any time within one year from the date of issue, but in this case, since it was done just a few days before the Chinese New Year, the clear intention of the levy was to embarrass the first defendant, a Chinese, and her family during the festive season.

On perusing the record I find that there were irregularities which warrant me to exercise my powers of revision under the Courts of Judicature Act, 1964. On 15th February, 1972 I ordered the judgment of the learned magistrate to be set aside, the execution order to be revoked and the statement of claim to be rejected. These are my reasons.

The statement of claim in the civil action which was purported to have been brought by the plaintiff was not signed by the plaintiff. It was signed by an unknown person who described himself as "agent". There was no indication in the statement of claim as to what was the relationship between the "principal" (*i.e.* the person named as plaintiff) and the "agent", which gives the "agent" the right to sue in the name of the "principal". It was not even shown anywhere in the pleadings or the court record that he was licensed to carry on business as an agent under section 5 of the Moneylenders Ordinance, 1951. On the face of the statement of the claim the registrar should have rejected it on the ground that it was not signed by the plaintiff or his solicitor as required by Order X rule 1 of the Subordinate Courts Rules, 1950. Order VI rule 3 specifically requires the registrar to examine a summons presented for filing. The rule also gives him power to reject a summons or direct it to be amended if he is of the opinion that it is not in proper form. The form can hardly be said to be proper in this case when the statement of claim was signed by a person other than the plaintiff herself.